IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

WP(C).No. 2161 of 2007(G)

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PETITIONER:

RAVI, S/O. DASAPUSHPAN,
NEDUMPETHARAYIL, ADINADU NORTH P.O.,
ADINADU VADAKKUM MURI, (FROM DWARAKA,
ADINADU SOUTH, KATTILKADAVU P.L.,
KARUNAGAPPALLY.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS:

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1. VIJAYA KUMAR, S/O. BHARGAVAN,
SASI MANDIRAM, KIDANGAYAM,
VADAKKUM MURI, PATHARAM P.O.,
SOORANADU.

2. BHARGAVAN, S/O. MADHAVAN,
W/O. YOHANNA VARGHESE, SASI MANDIRAM,
KIDANGAYAM VADAKKUM MURI, PATHARAM P.O.,
SOORANADU.

3. PANKAJAKSHAN, S/O. VASU,
KOCHUKURUMBELIL, ADINADU THEKKUM MURI,
KATTILKADAVIL P.O., KARUNAGAPPALLY.

4. GOPI, S/O. VASU,
KOCHUKURUMBELIL, ADINADU THEKKUM MURI,
KATTILKADAVU P.O., KARUNAGAPPALLY.

5. PEETHAMBARAN,
ANIL BHAVAN, ADINADU SOUTH,
KATTILKADAVU P.O., KARUNAGAPPALLY.
(DIRECTOR BOARD MEMBER), KULASEKHARAPURAM
SERVICE CO-BANK NO.995, ADINADU.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) NO.2161 OF 2007-G

Dated this the 30th day of January, 2007

JUDGMENT

The petitioner is the complainant in a private complaint filed before the learned Magistrate. He has raised the allegations that accused 1 to 5 have committed the offences punishable, inter alia, under Secs.420 and 468 read with Sec.34 of the IPC.

2. The crux of the allegations is that all the five accused, in furtherance of their common intention, have cheated the petitioner and have created false documents. The factual allegation is that the 3rd accused is the owner of an item of property. He had pledged it with the bank of which the 5th accused is a Director. The 3rd accused had executed a Power-of-Attorney in favour of the 4th accused and the 4th accused, on the strength of that Power-of-Attorney, had executed a sale deed in favour of the 1st accused. Accused 3 and 4 are brothers. The 1st accused, who thus claims title, had executed a Power-of-Attorney in favour of the 2nd accused – his son and the 2nd accused, in turn, had executed the sale deed in favour

of the complainant on behalf of his father. The short contention is that all the five accused together acting in furtherance of their common intention did not reveal to the petitioner that there was an encumbrance on the property in favour of the bank. This, in short, is the grievance raised.

3. The learned Magistrate received the complaint. The learned Magistrate did not choose to refer the complaint to the police under Sec.156(3) of the Cr.P.C. Evidently, the learned Magistrate, conscious of the principle enumerated in **Superintendent of Police, C.B.I. v. State of Kerala** (2005 (3) KLT 823), did not choose to refer the matter to the police under Sec.156(3) of the Cr.P.C. and chose to conduct an enquiry himself under Sec.202 of the Cr.P.C. The petitioner, who filed the complaint on 9/1/07, had rushed to this Court and filed this petition on 17/1/07 alleging that the learned Magistrate did not take any action on his complaint.

4. A report from the learned Magistrate was called for. The learned Magistrate has made the position very clear. The complaint was received on 9/1/07. The complainant was not

ready for recording his sworn statement. The learned Magistrate has decided to conduct an enquiry under Sec.202 of the Cr.P.C. The case now stands posted to 17/2/07 for conducting an enquiry under Sec.202 of the Cr.P.C.

5. The facts have been referred above. I am not at all persuaded to agree that the learned Magistrate has committed any error/irregularity which would justify the invocation of the constitutional powers under Art.226/227 of the Constitution. It is not obligatory that the Magistrate must refer a complaint to the police under Sec.156(3) of the Cr.P.C. Nay, it has been held in **Superintendent of Police, C.B.I. v. State of Kerala** (2005 (3) KLT 823) that the decision to refer the complaint to the police under Sec.156(3) of the Cr.P.C. should not be taken mechanically and a court must be conscious of the repercussions of such decision on the interests of the accused. I shall carefully avoid any detailed discussions or expression of opinion on the nature of the allegations made in the complaint. Suffice it to say that I am not at all persuaded to agree that the powers under Art.226 of the Constitution deserve to be invoked in the facts and

circumstances of this case against the course decided by the learned Magistrate that Sec.202 enquiry must be conducted. Needless to say that the dismissal of this writ petition will not fetter the powers of the learned Magistrate to conduct an appropriate enquiry under Sec.202 of the Cr.P.C.

6. This writ petition is, in these circumstances, dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge